

**The Grand Rapids Press, a Division of Booth Newspapers, Inc., a Division of The Herald Company and Detroit Newspaper Local 13N, Graphic Communications International Union, AFL-CIO**

**The Bay City Times, a Division of Booth Newspapers, Inc., a Division of The Herald Company and Detroit Newspaper Local 13N, Graphic Communications International Union, AFL-CIO**

**The Saginaw News, a Division of Booth Newspapers, Inc., a Division of The Herald Company and Detroit Newspaper Local 13N, Graphic Communications International Union, AFL-CIO**

**The Flint Journal, a Division of Booth Newspapers, Inc., a Division of The Herald Company and Detroit Newspaper Local 13N, Graphic Communications International Union, AFL-CIO.** Cases 7-CA-37463, 7-CA-37465, 7-CA-37466, and 7-CA-37467

June 15, 1998

#### DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX  
AND BRAME

On January 22, 1997, Administrative Law Judge Robert M. Schwartzbart issued the attached decision. The Respondents jointly filed exceptions, a supporting brief, and an answering brief. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Orders as modified and set forth in full below.

The General Counsel excepted to the judge's failure to include a make-whole remedy for individuals to be named at the compliance stage whom the Respondents

discriminated against or who lost earnings based on the Respondents' unilateral changes in their referral systems for hiring substitute pressmen. The Respondents oppose the extension of the judge's remedy to include unnamed individuals. We agree with the General Counsel and will modify the remedy to include relief for individuals who have been affected by the Respondents' unlawful conduct. Thus, to remedy the Respondents' discriminatory refusal to employ striking Detroit News Agency pressmen, we will include, in addition to the remedy provided by the judge for the five named individuals in the Respondent Bay City Times' Order, a make-whole remedy in that Order, as well as in the Orders of each of the other Respondents, for any striking pressmen it is ascertained at the compliance stage of this proceeding would have been referred as substitutes absent discrimination by the respective Respondents. Furthermore, to remedy the Respondents' unilateral changes in their established referral procedures for hiring of substitute pressmen, we shall provide in each Order relief for any individuals found to have been affected by the Respondents' failure to abide by the established referral practices.<sup>2</sup>

We find the granting of this relief to be consistent with the Board's customary practice in light of the language of the complaint and the violations found. In this regard, the complaint does not allege unlawful conduct by the Respondents against specifically named individuals. Rather, it alleges discrimination generally against employees refused employment as substitute pressmen by the Respondents because of their protected, concerted union activities in engaging in a strike. The judge found that the Respondents refused to employ substitute pressmen from the Local because these pressmen were engaged in a strike against their primary employer, the Detroit News Agency, and the record clearly establishes wholesale refusals by the Respondents to employ any striking pressmen. In a variety of contexts, where discrimination has been alleged and found against a defined and easily identifiable class, the Board, with court approval, has found it appropriate to extend remedial relief to all members of that class. See *Morton Metal Works*, 310 NLRB 195 (1993), enfd. 9 F.3d 108 (6th Cir. 1993), citing *Ironworkers Local 433 (Reynolds Electrical)*, 298 NLRB 35, 36 (1990), enfd. 931 F.3d 897 (9th Cir. 1991). See also *Teamsters Local 328 (Blount Bros.)*, 283 NLRB 779 (1987), denying reconsideration of 274 NLRB 1053 (1985).

Similarly, the complaint allegations concerning the unilateral change in the Respondents' referral procedures were not limited and the complaint did not allege a unilateral change affecting specific, named individuals. Further, the General Counsel, in his request for

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We further correct the following factual errors by the judge, which do not affect his decision. Union President Howe testified without contradiction that pressman Taylor, rather than Brennan, had been referred to the Bay City Times in December 1994. Contrary to the judge, the Saginaw News' most recent collective-bargaining agreement with the Union, similar to the collective-bargaining agreements covering the other three Respondents, does make reference to a Priority Substitution List. This language is contained in art. 2 of the agreement.

<sup>2</sup> We shall also amend the Order against The Flint Journal to reflect that its unilateral action occurred on July 14, 1995.

affirmative relief in the complaint, requested a make-whole remedy for substitutes, without any limitation, for any losses they may have suffered by reason of the Respondents' unlawful, unilateral conduct. In any event, the Board's standard remedy in Section 8(a)(5) cases involving unilateral changes resulting in losses to employees is to make whole any employee affected by the change. See *North Star Steel v. NLRB*, 974 F.2d 68, 70-71 (8th Cir. 1992), enfg. 305 NLRB 45 (1991).

Thus, there is no issue here of extending a remedy beyond the scope of the complaint since the allegations themselves, as well as the request for relief, are drafted in terms sufficiently broad to encompass the relief we grant. Likewise, there is no notice issue because the allegations themselves are sufficiently broad to put the Respondents on notice that they have been charged with committing unfair labor practices against an identified group of unnamed individuals. *Morton Metal Works*, supra, and *Woodline Motor Freight*, 278 NLRB 1141, 1143 fn. 6 (1986), enfd. in pertinent part 843 F.2d 285, 289 (8th Cir. 1988).

Accordingly, in view of the foregoing, we find it appropriate to include in our new Orders relief for all employees who would have been referred and employed as substitute pressmen absent the Respondents' unlawful conduct.<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that

A. The Respondent, The Grand Rapids Press, a Division of Booth Newspapers, Inc., a Division of the Herald Company Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to employ substitute pressmen or other substitute employees, or from otherwise discriminating against employees referred to it for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO, because such employees have engaged in a strike or other concerted activities in support, or on behalf of Local 13N, or any other labor organization.

(b) Refusing to bargain collectively with Local 13N as the exclusive collective-bargaining representative of its employees in the following appropriate unit by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Grand Rapids Press and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressmen and pressmen apprentices employed by The Grand Rapids Press at its Grand Rapids, Michigan facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral restrictions which The Grand Rapids Press imposed on, and has maintained since July 14, 1995, limiting Local 13N's right to refer substitute employees for employment at the Respondent's facility.

(b) Make whole any individuals for any losses they may have suffered because of the Respondent's unilateral changes in the substitute pressmen referral procedure.

(c) Make whole any individuals adversely affected by the Respondent's discriminatory refusal to employ them as substitute pressmen because they engaged in protected union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of the unlawful action in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix A."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by The Grand Rapids Press' authorized representative, shall be posted by The Grand Rapids Press immediately upon receipt and maintained for 60 consecutive days in conspicuous places including places where notices to employees are customarily posted. Reasonable steps shall be taken by The Grand Rapids Press to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, The Grand Rapids Press has gone out of business or closed the facility involved in these proceedings, The Grand Rapids Press shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by

<sup>3</sup> The identity of these individuals shall be ascertained at the compliance stage. *Morton*, supra, and *Reynolds*, supra. See also *NLRB v. Iron Workers Local 433 (Associated General Contractors)*, 600 F.2d 770, 778-779 (9th Cir. 1979), enfg. 228 NLRB 1420 (1977), cert. denied 445 U.S. 915 (1980).

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Grand Rapids Press at any time since July 14, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that The Grand Rapids Press has taken to comply.

B. The Respondent, The Bay City Times, a Division of Booth Newspapers, Inc., a Division of The Herald Company, Inc., Bay City, Michigan, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to employ substitute pressmen or other substitute employees, or from otherwise discriminating against employees referred to it for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO, because such employees have engaged in a strike or other concerted activities in support, or on behalf of Local 13N, or any other labor organization.

(b) Refusing to bargain collectively with Local 13N as the exclusive collective-bargaining representative of its employees in the following appropriate unit by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Bay City Times and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressroom employees employed by The Bay City Times at its Bay City, Michigan facility, excluding the foremen, professional employees of office clerical employees, guards and supervisors, as defined in the Act.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral restrictions which The Bay City Times imposed on, and has maintained since July 17, 1995, limiting Local 13N's right to refer substitute employees for employment at the Respondent's facility.

(b) Make whole any individuals for any losses they may have suffered because of the Respondent's unilateral changes in the substitute pressmen referral procedure.

(c) Make whole pressmen Morris (Bud) Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson, and any other individuals similarly situated, for any losses of pay or benefits, with interest, suffered as a result of the Respondent's discriminatory refusal to employ them as substitute pressmen because of their protected Union activity against their principal employer in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bay City, Michigan, copies of the attached notice marked "Appendix B."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by The Bay City Times' authorized representative, shall be posted by The Bay City Times immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by The Bay City Times to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, The Bay City Times has gone out of business or closed the facility involved in these proceedings, The Bay City Times shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by The Bay City Times at any time since July 17, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that The Bay City Times has taken to comply.

C. The Respondent, The Saginaw News, a Division of Booth Newspapers, Inc., a Division of The Herald Company, Inc., Saginaw, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to employ substitute pressmen or other substitute employees, or from otherwise discriminating against employees referred to it for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO, because such employees have engaged in a strike or other concerted activities in support, or on behalf of Local 13N, or any other labor organization.

(b) Refusing to bargain collectively with Local 13N as the exclusive collective-bargaining representative of its employees in the following appropriate unit by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Saginaw News and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All press department employees employed by the Publisher of The Saginaw News at that Company's Saginaw, Michigan facility, excluding the

<sup>5</sup> See fn. 4, supra.

foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral restrictions which The Saginaw News imposed on, and has maintained since July 17, 1995, limiting Local 13N's right to refer substitute employees for employment at the Respondent's facility.

(b) Make whole any individuals for any losses they may have suffered because of the Respondent's unilateral changes in the substitute pressmen referral procedure.

(c) Make whole any individuals adversely affected by the Respondent's discriminatory refusal to employ them as substitute pressmen because they engaged in protected Union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of the unlawful action in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Saginaw, Michigan, copies of the attached notice marked "Appendix C."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by The Saginaw News' authorized representative, shall be posted by Saginaw News immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by The Saginaw News to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, The Saginaw News has gone out of business or closed the facility involved in these proceedings, The Saginaw News shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by The Saginaw News at any time since July 17, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that The Saginaw News has taken to comply.

D. The Respondent, The Flint Journal, a Division of Booth Newspapers, Inc., a Division of The Herald Company, Inc., Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to employ substitute pressmen or other substitute employees, or from otherwise discriminating against employees referred to it for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO, because such employees have engaged in a strike or other concerted activities in support, or on behalf of Local 13N, or any other labor organization.

(b) Refusing to bargain collectively with Local 13N as the exclusive collective-bargaining representative of its employees in the following appropriate unit by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Flint Journal and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All press department employees employed by The Flint Journal at its Flint, Michigan facility, excluding the foremen, assistant foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral restrictions which The Flint Journal imposed on, and has maintained since July 14, 1995, limiting Local 13N's right to refer substitute employees for employment at the Respondent's facility.

(b) Make whole any individuals for any losses they may have suffered because of the Respondent's unilateral changes in the substitute pressmen referral procedure.

(c) Make whole any individuals adversely affected by the Respondent's discriminatory refusal to employ them as substitute pressmen because they engaged in protected Union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of the unlawful action in the manner set forth in the remedy section of the decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

<sup>6</sup> See fn. 4, *supra*.

(e) Within 14 days after service by the Region, post at its facility in Flint, Michigan, copies of the attached notice marked "Appendix D."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by The Flint Journal's authorized representative, shall be posted by The Flint Journal immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by The Flint Journal to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, The Flint Journal has gone out of business or closed the facility involved in these proceedings, The Flint Journal shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by The Flint Journal at any time since July 14, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that The Flint Journal has taken to comply.

<sup>7</sup> See fn. 4, supra.

#### APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to employ substitute pressmen or other substitute employees and WE WILL NOT otherwise discriminate against employees referred to us for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO because such employees have engaged in a strike or other concerted activities in support, or on behalf of, Local 13N, or any other labor organization.

WE WILL NOT refuse to bargain collectively with Local 13N as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Grand Rapids Press and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressmen and pressmen apprentices employed by us at our Grand Rapids, Michigan facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral restrictions which we imposed on, and have maintained since July 14, 1995, limiting Local 13N's right to refer substitute employees for employment at our facility.

WE WILL make whole any individuals for any losses they may have suffered because of our unilateral changes in the substitute pressmen referral procedure.

WE WILL make whole any individuals adversely affected by our discriminatory refusal to employ them as substitute pressmen because they engaged in protected union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of our unlawful action.

THE GRAND RAPIDS PRESS, A DIVISION  
OF BOOTH NEWSPAPERS, INC., A DIVISION  
OF THE HERALD COMPANY, INC.

#### APPENDIX B

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to employ substitute pressmen or other substitute employees and WE WILL NOT otherwise discriminate against employees referred to us for employment by Detroit Newspapers Local 13N, Graph-

ic Communications International Union, AFL-CIO because such employees have engaged in a strike or other concerted activities in support, or on behalf of, Local 13N, or any other labor organization.

WE WILL NOT refuse to bargain collectively with Local 13N as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Bay City Times and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressmen and pressmen apprentices employed by us at our Bay City, Michigan facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral restrictions which we imposed on, and have maintained since July 17, 1995, limiting Local 13N's right to refer substitute employees for employment at our facility.

WE WILL make whole any individuals for any losses they may have suffered because of our unilateral changes in the substitute pressmen referral procedure.

WE WILL make whole pressmen Morris (Bud) Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson, and any other individuals similarly situated, with interest, for any loss of earnings and other benefits as a result of our unlawful refusals to hire them as substitutes.

WE WILL make whole any individuals adversely affected by our discriminatory refusal to employ them as substitute pressmen because they engaged in protected union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of our unlawful action.

THE BAY CITY TIMES, A DIVISION OF  
BOOTH NEWSPAPERS, INC., A DIVISION  
OF THE HERALD COMPANY, INC.

## APPENDIX C

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to employ substitute pressmen or other substitute employees and WE WILL NOT otherwise discriminate against employees referred to us for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO because such employees have engaged in a strike or other concerted activities in support, or on behalf of, Local 13N, or any other labor organization.

WE WILL NOT refuse to bargain collectively with Local 13N as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Saginaw News and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressmen and pressmen apprentices employed by our publisher at our Saginaw, Michigan facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral restrictions which we imposed on, and have maintained since July 17, 1995, limiting Local 13N's right to refer substitute employees for employment at our facility.

WE WILL make whole any individuals for any losses they may have suffered because of our unilateral changes in the substitute pressmen referral procedure.

WE WILL make whole any individuals adversely affected by our discriminatory refusal to employ them as substitute pressmen because they engaged in protected union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of our unlawful action.

THE SAGINAW NEWS, A DIVISION OF  
BOOTH NEWSPAPERS, INC., A DIVISION  
OF THE HERALD COMPANY, INC.

#### APPENDIX D

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to employ substitute pressmen or other substitute employees and WE WILL NOT otherwise discriminate against employees referred to us for employment by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO because such employees have engaged in a strike or other concerted activities in support, or on behalf of, Local 13N, or any other labor organization.

WE WILL NOT refuse to bargain collectively with Local 13N as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by making unilateral changes in the referral system for the hire of substitute employees, established under the current collective-bargaining agreement between The Flint Journal and Local 13N, without first reaching agreement with Local 13N concerning such changes:

All pressmen and pressmen apprentices employed by us at our Flint, Michigan facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral restrictions which we imposed on, and have maintained since July 14, 1995, limiting Local 13N's right to refer substitute employees for employment at our facility.

WE WILL make whole any individuals for any losses they may have suffered because of our unilateral changes in the substitute pressmen referral procedure.

WE WILL make whole any individuals adversely affected by our discriminatory refusal to employ them as substitute pressmen because they engaged in protected union activity against their principal employer for any losses of earnings or other benefits, with interest, suffered as a result of our unlawful action.

THE FLINT JOURNAL, A DIVISION OF  
BOOTH NEWSPAPERS, INC., A DIVISION  
OF THE HERALD COMPANY, INC.

*Thomas M. Doerr, Esq.*, for the General Counsel.

*Bruce H. Berry, Esq. (Sabin, Bermant & Gould, LLP)*, of  
New York, New York, for the Respondents.

*Jack Howe*, of Detroit, Michigan, for the Charging Party.

#### DECISION

##### STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge. This case was tried in Lansing, Michigan, upon a consolidated complaint issued pursuant to charges filed by Detroit Newspapers Local 13N, Graphic Communications International Union, AFL-CIO (the Union).<sup>1</sup> The consolidated complaint alleges that the Respondents, The Grand Rapids Press (Press), The Bay City Times (Times), The Saginaw News (News), and The Flint Journal (Journal), each of which is a division of Booth Newspapers which, in turn, is a division of The Herald Company, violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by discriminatorily refusing to employ substitute pressmen referred to them for employment by the Union because such employees were engaged in a strike against their principal employer, the Detroit Newspaper Agency (DNA). The consolidated complaint further alleges that the Respondents violated Section 8(a)(5) and (1) of the Act by unilaterally changing the established referral hiring procedures between the respective Respondents and the Union regarding the employment of substitute pressmen. The Respondents, in their individual timely filed answers, have denied the commission of unfair labor practices.<sup>2</sup>

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine wit-

<sup>1</sup> The relevant docket entries are as follows: The charges in Cases 7-CA-37463, 7-CA-37465, 7-CA-37466, and 7-CA-37467 all were filed on July 21, 1995, and the amended charges in each of those cases were filed on August 16, 1995. The order consolidating cases and the consolidated complaint issued September 1, 1995, and the hearing was conducted on January 30 and 31, 1996.

<sup>2</sup> All dates are in 1995 unless otherwise indicated.

nesses, and to file briefs. Briefs, filed by the General Counsel and the Respondent, have been carefully considered. Upon the entire record of the case, including my observation of the witnesses and their demeanor, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent Press has an office and place of business in Grand Rapids; Respondent Times has an office and place of business in Bay City; Respondent News has an office and place of business in Saginaw; and Respondent Journal has an office and place of business in Flint; all within the State of Michigan. Press, Times, News, and Journal each are unincorporated divisions of Booth Newspapers, Inc., a subsidiary of The Herald Company, Inc., a New York corporation. During the calendar year ending December 31, 1994, Press, Times, News, and Journal, in conducting their respective business operations, the publication of daily newspapers, each derived gross revenues exceeding \$200,000, subscribed to various interstate news services, published various nationally syndicated features, and advertised various nationally sold products. As Press, Times, News, and Journal each have admitted the foregoing commerce data and that each of them, at all times material to this proceeding, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, I so find. Press, Times, News, and Journal each have admitted, and I further find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Facts*

##### 1. Background

Respondents Press, Times, News, and Journal, all employed pressmen in the production of daily newspapers in the Michigan cities referenced in their respective names. Since at least 1967, the Union has represented separate units of pressmen at each Respondent's plant<sup>3</sup> for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment and, in that time, the respective

<sup>3</sup> The respective separate appropriate collective-bargaining units at each Respondent's facility are as follows:

**Grand Rapids:** All pressmen and pressmen apprentices employed by The Grand Rapids Press at its Grand Rapids, Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

**Bay City:** All pressroom employees employed by the Bay City Times at its Bay City, Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

**Saginaw:** All press department employees employed by the Publisher of the Saginaw News at that Company's Saginaw Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

**Flint:** All press department employees employed by the Flint Journal at its Flint, Michigan, facility, excluding the foremen, assistant foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

Respondents, having recognized the Union as the exclusive collective-bargaining representative of their pressmen, entered into separate successive collective-bargaining agreements with the Union. Press, Times, News, and Journal are parties to separate collective-bargaining agreements with the Union covering their pressmen, each effective from April 1, 1994, until March 31, 1998. At present, the Union, in respective approximations, represents 27 bargaining unit employees at Press, 8 such employees at Times, 9 unit employees at News, and 17 employees at Journal.

At all times material to this case, the Union also has been the collective-bargaining representative of about 310 employees of the Detroit Newspaper Agency (DNA). DNA publishes the Detroit News and the Detroit Free Press. On July 13, DNA's bargaining unit employees began a strike against it, which continued into 1996.

The current collective-bargaining agreement between the Union and Journal included the following provision in article 4.2:

Should the Company desire to replace an employee who is absent, the foreman will request the chapel chairman<sup>4</sup> to either call in an employee from his or her off day or call in a substitute. An employee called in from an off day or a substitute shall not be hired for less than a full shift. If a substitute is called in, preferences will be given to those persons whose names are listed on a Priority Substitute List supplied by the Union.

Similar language was included in article 16.2 of the collective-bargaining agreement between the Union and Times.

The Union's collective-bargaining agreements with Press and News also provided that, upon a foreman's request, the Union's chapel chairman shall replace an absent employee by calling in an employee who was off for the day or by calling in a substitute. Press' collective-bargaining agreement with the Union, at article 19.2 further stated that: "If a substitute is called in, preference will be given to those persons whose names are listed on a Priority Substitute List supplied by the Union . . . ." The News labor contract, which, in article 17.2, provided for the hire of substitute press department employees, neither included such a provision nor otherwise limited the Union's discretion in providing substitutes.

Before the start of the July 13 strike, the Union routinely had provided substitute pressmen when asked to do so by the pressroom foremen, without need to consult with any of the Respondents. The only restriction imposed by any of the Respondents was that the substitute be a journeyman. In fact, the parties have stipulated that, historically, whenever any of the four Respondent newspapers required a substitute pressman, they would proceed by so informing the chapel chairman and then a substitute would appear. The chapel chairmen even determined where the substitute pressmen would be assigned to work. I find from Howe's testimony that, in 1995, Journal rejected pressmen who belonged to the Port

<sup>4</sup> I find, in accordance with the stipulation of the parties at the hearing, that the Union's chapel chairmen are the equivalent of chief shop stewards appointed by labor organizations in other industries. I also note that the duties of union stewards include implementation and enforcement of collective-bargaining agreement provisions. E.g., *Howard Electric Co.*, 285 NLRB 911, 913 (1987).



Huron Times chapel,<sup>5</sup> and that this was the only such refusal to employ by the Respondents herein.

## 2. The events at Press

Before July 13, Press' management played no role in the selection of substitute pressmen to work on its production line.<sup>6</sup> The Union, 8 or 9 months prior to the hearing in these cases, without consultation with, or comment from, Press, added two names to the Union's list of pressmen available to substitute at that facility.

Soon after the DNA strike began, the respective Respondents, for the first time, began to express interest in the make-up of the Union's substitute lists. On Friday, July 14, Press' foreman, Daniel Silverdale,<sup>7</sup> directed Assistant Chapel Chairman Ernest Bellechasses not to hire any new substitute pressmen. Bellechasses declared that he did not understand what Silverdale was talking about and asked if he was "referring or insinuating regarding the guys in Detroit." Silverdale replied, "Something to that effect, it's got something to do about that." Bellechasses told Silverdale that there would be a problem with this. The schedule of workers for that weekend<sup>8</sup> already had been established and the workers contacted. Such schedules, once set up, were not subject to change. However, Bellechasses informed Silverdale, for the next week, the Detroit pressmen, "Definitely . . . have priority over our local subs." Bellechasses suggested a meeting between Press' management and the Union's chapel leadership to resolve the matter.

Accordingly, a meeting took place in the office of Press' general manager, Dick Morton, on the following Monday. Morton and Silverdale represented Press. Bellechasses, Chapel Chairman Anthony Cecola, and Assistant Chapel Chairman John C. Dietrick attended for the Union. Cecola asked Morton to explain why the Detroit pressmen could not be hired as substitutes. Morton answered that he was having a problem with quality and production control and for that reason he did not want new substitutes. Morton complained that the price of paper had increased to \$800 a role and that the Press had been getting more complaints about the set of the colors and that the register was off. According to Dietrick, Morton declared that "[p]aper cost too much money and we don't want any new people working on our press." Dietrick asked what Morton was talking about; how could these be

new people? "These guys been journeymen pressmen all their life . . . they worked all their lives here."<sup>9</sup>

At that meeting, Cecola persisted, asking why Press would not hire substitutes from Detroit. Morton reiterated that he would not allow in any new subs because of his concerns about the quality of the paper. He pointed out that new subs were not familiar with Press' equipment. Cecola and Dietrick sought to assure Morton that the Union would see to it that the qualified journeymen it recruited to be subs for Press would not be in a position to affect the quality of Press' newspaper. The Union would assign the Detroit subs to work in the basement, where they would have no contact with the paper or the ink.<sup>10</sup> Press' regular employees would perform the actual production. Morton stuck to his position, telling the union representatives that after he had to make a phone call, he would give them "a straight answer." The meeting adjourned until the following morning.

The meeting resumed on July 18, in Morton's office, with the same participants in attendance. Cecola asked if the Union could recruit new substitute pressmen for Press. Morton replied that Press would not "have or hire any subs from Detroit." He also related that he had made a phone call and learned that the entire Booth chain was not going to hire any new substitutes.<sup>11</sup> Morton limited recruiting of substitute pressmen to those who had substituted at the Press during the previous 3 months.<sup>12</sup>

Dietrick testified that, before the strike against DNA, he had resorted to three resource lists to obtain substitutes for Press, in the following order: the Detroit pressmen's local, Press' retirees and, lastly, casual substitutes. The casual subs were drawn from Locals 13C and 550, two Grand Rapids sister locals to the Union herein.

## 3. The events at Journal

From January to July 1995, before the DNA strike, Chapel Chairman James Mercado, a pressman employed by Journal, obtained three substitute pressmen for his employer—Paul Gareau, Willie Nelson, and Duane Phillips all without first clearing them with, or subject to any restriction imposed by, Journal.<sup>13</sup>

<sup>5</sup>The reason reflected in the record for Journal's rejection of the Port Huron Times pressmen, concern over possible sabotage, was unrelated to any of the expressed motives for actions alleged as violative of the Act in the present matter.

<sup>6</sup>My findings regarding Press' policy regarding the hiring of substitute pressmen prior to July 13 are based upon the uncontradicted testimony of Chapel Chairman Anthony Cecola and of his Assistant Chapel Chairman John C. Dietrick. Both Cecola and Dietrick were Press employees at all times material to these cases, including when they testified at the hearing in this proceeding.

<sup>7</sup>The transcript record herein is corrected, sua sponte, to reflect the correct spellings of the names of Pressroom Foremen Daniel Silverdale and Kenneth Rosendall, as established in the pleadings.

<sup>8</sup>Bellechasses explained that his references to weekends actually meant Saturday nights. Much of the need for pressroom substitutes relevant to this proceeding related to Saturday night scheduling, when larger work crews were needed to publish the larger Sunday editions.

<sup>9</sup>Several DNA pressmen previously had worked at Press.

<sup>10</sup>The record reveals that the chapel chairmen determined where the substitutes would work in the pressroom.

<sup>11</sup>Bellechasses testified that Morton said that he did not know what the other chapels would be doing about hiring substitute pressmen. However, Cecola and Dietrick testified that Morton had stated that the entire Booth chain would not hire new substitute pressmen. Unlike Cecola and Dietrick, who seemed certain of their recollections of Morton's remarks at the second meeting, Bellechasses sounded less sure of what he had heard from Morton on that occasion. Accordingly, I have credited Cecola's and Dietrick's recollections of Morton's remarks about the Booth chain's policy toward hiring new subs.

<sup>12</sup>In accordance with the parties' stipulation concerning the distances the DNA pressmen would have to travel from their home base in order to work as substitutes at the respective Respondents' newspapers, Detroit is located 150 miles from Grand Rapids, between 125 to 130 miles from Bay City, between 105 to 110 miles from Saginaw, and 65 miles from Flint.

<sup>13</sup>My findings regarding Journal's policy regarding the hiring of substitute pressmen prior to July 13 are based upon Mercado's uncontradicted testimony.

On July 14, Journal's pressroom foreman, Max Kuehling, invited Chapel Chairman Mercado into Kuehling's office to discuss a new policy for recruiting substitute pressmen for Journal. Kuehling directed that after Saturday night, July 15, Mercado could recruit subs only from a list of those substitute pressmen who had worked at Journal during the previous 3 months. Kuehling would furnish that list. When Mercado asked for an explanation, Kuehling replied that he wanted to maintain the quality of the paper coming off the press. Mercado took issue with Kuehling, pointing out that the subs usually worked in the basement reel room, where paper was fed into the presses.<sup>14</sup> Accordingly, the subs had nothing to do with setting color, and had little, if any, effect upon quality. Kuehling answered, "This is my decision."

On July 19, Foreman Kuehling gave Mercado a list, directing that he thereafter use it when hiring substitutes. This was the first time anyone from Journal's management had given Mercado such a list. Mercado repeated his unsuccessful argument against the list, but Kuehling made no further comment.<sup>15</sup>

Mercado testified that earlier, in obtaining substitute pressmen for Journal, he traditionally first had called the Detroit local to obtain subs from among DNA employees; then he would call retirees; and, finally, he would call pressmen from other local unions.

#### 4. The events at Times

I find from the uncontradicted background testimony of Union President Howe that, in June, the Union had referred pressman Willie Nelson to work as a substitute at Times. Howe's testimony shows that, earlier, in December 1994, the Union had sent pressman Michael Brennan to Times. Neither referral had been subject to any Times'-imposed restriction or had required that Employer's prior approval.

After the start of the July 13 strike against DNA, Times' pressroom foreman, Robert King, telephoned employee Derrick Taylor, the Times assistant chapel chairman, at the latter's home on Saturday evening, July 15, and asked why Jim Centers was working that night. Taylor replied that he had selected Centers, a DNA pressman, as a substitute for an employee who had called in sick. King said he wanted to be informed about all future substitutes. In the same conversation, Taylor obtained clearance from King to hire Morris (Bud) Chaney, a pressman from DNA, to work as a substitute on July 17. However, there was no showing that King had asked about Chaney's prior employment history or about whether he was from Detroit.<sup>16</sup>

On July 17, 2 days' later, at about 8 a.m., King called Taylor to his office and gave him a list of five pressmen, all from DNA, including Bud Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson, who, King announced, could work as substitutes at Times. Times, on the night of July 15, already had employed Centers as a substitute. Chaney also had worked at Times on July 17.

<sup>14</sup> The pressroom occupied two floors. The reel room was on the lower floor, while the presses were above on the main level.

<sup>15</sup> My above findings concerning Mercado's encounters with Foreman Kuehling on July 14 and 19 are based upon Mercado's uncontradicted testimony.

<sup>16</sup> My above findings concerning Taylor's conversations with Foreman King on July 15 and 17 are based upon Taylor's uncontradicted testimony.

After leaving King's office on July 17, Taylor returned to work where he observed King conversing with Times' publisher, C. Kevin Dykema. Soon after that conversation, King called Taylor to his office and issued new instructions regarding the five pressmen from DNA. King declared that the five individuals on the earlier list would not be allowed to work at Times. When Taylor asked why, King did not answer. King said he would give Taylor a new list later.

On the following day, Tuesday, King gave Taylor a new list of acceptable substitutes. No DNA pressmen, including none of the five who had been in King's earlier list, were named therein. Since receiving King's list, Taylor has used it as the exclusive source of substitute pressmen for Times.

Taylor related that his own practice in obtaining substitutes had been first to call Bay City employees and then to seek substitutes from Saginaw. If unable to raise enough substitutes in those areas, he then would call the Detroit local and, lastly, retirees.

#### 5. The events at News

One day after the DNA strike had begun, pressman Richard A. Huntley, the chapel chairman for News and Times, spoke to News' production manager, Robert White, about hiring a DNA pressman as a substitute at News for Saturday night, July 15. Shortly before this, Union President Howe had called Huntley to tell him that it would be appreciated if Huntley could get DNA employees work shifts in his area. White told Huntley that he was not sure about News' policy on hiring DNA employees, that he would make some phone calls on the matter and that he would get back to Huntley with the answer. Huntley, who already had selected a retiree to take a substitute job on Saturday night, told White to "just scratch it for now," and "talk about it Monday."

On Monday, July 17, in midafternoon, instead of further pursuing the matter with White, Huntley phoned News' pressroom foreman, Kenneth Rosendall, and asked about News' policy with respect to hiring DNA employees as substitutes. Rosendall replied that he did not "want those people up here damaging my presses." Huntley asked, "Why would these people come up here and damage the Saginaw News presses after there was no damage done in Detroit?" Rosendall said he was happy with the substitutes that News was employing, retirees, and ended the exchange.

On the following day, Huntley told Rosendall that the Union believed that News was not allowing DNA employees to work there because of the strike at DNA. Huntley asked Rosendall for a written statement of News' reason for refusing to hire DNA employees. Foreman Rosendall neither replied to Huntley's assertion nor provided a written statement of News' reasons for refusing to hire DNA employees.<sup>17</sup>

Huntley, employed at News, as noted, was chapel chairman at both News and Times-aided by assistant chapel chairman at each location. Huntley testified that, during the previous two years, he had not called the Detroit local to obtain substitutes to work at News because the shifts essentially had been covered and there was no need. He had used but four substitutes at News from January 1, 1995, to the time of the hearing. These had been two retirees and two Bay City pressmen. When he spoke to White on July 14 about News

<sup>17</sup> Huntley's above conversations with Foreman Rosendall appear in accordance with Huntley's uncontradicted testimony.

employing DNA substitutes, Huntley had been prepared to replace the retiree he then had scheduled with a DNA pressman. In view of White's response, the retiree went on to work the substitute shift for which he had been scheduled.

### B. Analysis and Conclusions

#### 1. The alleged discrimination

The Board has found that an employer's refusal to hire job applicants because they engaged in an economic strike violates Section 8(a)(3)<sup>18</sup> and (1)<sup>19</sup> of the Act.<sup>20</sup> Where, as here, an employer is charged with violating Section 8(a)(3) of the Act, the critical question is one of motive.<sup>21</sup>

Under the Board's test for determining whether an employer's refusal to hire a job applicant was motivated by hostility toward union activity or prounion sentiment, the General Counsel has the burden of persuading "that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense, that it would have taken the same action even if the employees had not engaged in protected activity (citation omitted)."<sup>22</sup> If the reasons advanced by the employer for its action are a pretext, that is, if the reasons either did not exist or were not in fact relied upon, it follows that the employer has not met its burden, and the inquiry logically is at an end.<sup>23</sup>

In the instant case, from the timing of the Respondents' conduct, statements made by their various representatives and other factors indicated below, the General Counsel has presented convincing evidence that the Respondents' later refusals to employ substitutes from DNA, when duly referred by the chapel chairman, were prompted by hostility to the Union's strike against DNA.

As to timing, the record shows that, before July 13, the Respondents, except for one above-noted situation, uniformly had left the selection of substitute pressmen to the exclusive discretion of their respective chapel chairmen or assistant chapel chairmen and that the Respondents' respective relevant policy changes were introduced from 1 to 3 days after the start of the strike. Accordingly, on the day after the start of the strike, Journal Pressroom Foreman Kuehling, Press Foreman Silverdale, and News Production Manager White suddenly intervened in the process for selecting substitute

pressmen. On July 17, Times Pressroom Foreman King, acting within 3 days after the start of the strike, gave the Union's chapel chairman a list of five potential substitutes, all union-represented pressmen from DNA who, King announced, were acceptable to Times. That same day, shortly after talking to Times' publisher, King, withdrew approval of the DNA pressmen as substitutes and, on the next day, presented the chapel chairman with a new list of just-proclaimed acceptable substitutes which list, as noted, did not include DNA pressmen and did not refer to those who had been on the earlier list.

Statements by Respondents' management representatives and supervisors in the wake of the DNA strike also evidenced intent to discriminatorily exclude striking DNA pressmen from employment as substitutes. When, in response to Press' Foreman Silverdale's direction not to hire any new substitute pressmen, Assistant Chapel Chairman Bellechasses had asked if Silverdale was "referring or insinuating regarding the guys in Detroit," Silverdale admitted: "Something to that effect, its got something to do about that." At a meeting with union representatives 4 days' later, Press' general manager, Morton, rejected the chapel chairman's request for authority to recruit new substitute pressmen for Press, declaring that Press would not "have or hire any subs from Detroit." Morton also revealed that the entire Booth chain would not hire any new substitutes. He limited Press' recruitment of substitute pressmen to those who had substituted at Press during the previous 3 months.

Three days after the start of the DNA strike, in replying to News Chapel Chairman Huntley's inquiry as to News' policy on recruiting DNA employees as substitutes, News Pressroom Foreman Rosendall stated that he did not "want those people up here damaging my presses." When Huntley sought to assure Rosendall that his fears of damage were unwarranted, Rosendall responded that he was happy with the substitutes News was using, the retirees.

The record does not support the Respondents contention that they were lawfully motivated when they respectively restricted the selection of substitutes after the start of the strike against DNA because concerned about the quality of their newspapers. When, at Journal, Foreman Kuehling, who had explained the imposed restriction on the hiring of substitutes to Chapel Chairman Mercado as a way to safeguard quality, was assured by Mercado that the substitutes usually worked in Journal's basement reel room and would have little effect on the quality of its end product, Kuehling, like Rosendall at News, did not dispute this assertion. His only response was: "This is my decision."

Press General Manager Morton replied similarly on July 17, when Chapel Chairman Cecola asked him why subs from Detroit could not be used at Press if Cecola kept them from touching color control. Morton had replied that Press would not have or hire any substitutes from Detroit and that he had learned from a phone call that the entire Booth newspaper chain was not going to hire any new substitutes. Since the uncontroverted evidence was that the DNA substitutes, if brought in to work for the Respondents, would not have been situated to adversely affect quality, I find that Respondent's arguments in this regard to be without substance.

The silence of certain Respondents' representatives also was meaningfully eloquent. Times Foreman King had no answer when Assistant Chapel Chairman Taylor asked why

<sup>18</sup> Sec. 8(a)(3) of the Act (29 U.S.C. § 158(a)(3)) makes it an unfair labor practice for an employer to discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ."

<sup>19</sup> Sec. 8(a)(1) of the Act (29 U.S.C. § 158(a)(1)) makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7."

Sec. 7 of the Act (29 U.S.C. § 157) provides, in pertinent part: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."

<sup>20</sup> *Handy Andy, Inc.*, 313 NLRB 616, 621 (1993).

<sup>21</sup> *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996).

<sup>22</sup> *Id.*

<sup>23</sup> *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

five DNA pressmen, whom King had just designated acceptable as substitutes, could not work at the Times. On July 18, News' foreman, Rosendall, did not respond when Chapel Chairman Huntley accused News of discriminating against the DNA pressmen because they were strikers. Finally, the Respondents did not present any testimony from members of their management to support their contentions.

From the timing of the respective Respondents' changes in their traditional, uniformly applied policy with respect to the hire of substitutes, all of which were effectuated shortly after the start of the strike against DNA; from the above revelatory statements by certain Respondents' representatives concerning the reasons for these changes in policy; from the lack of substance to the Respondents' representatives' assertions of concern for the quality of their newspapers, given as justification for the new policies; and from the inability of some Employers' representatives to explain their abrupt changes in direction in this regard, I find that the record supports the General Counsel's contention that the Respondents refused to hire DNA pressmen when referred as substitutes by the chapel chairmen because such employees had supported the Union by engaging in the strike against DNA. I, therefore, find that the Respondents respectively violated Section 8(a)(3) and (1) of the Act by this discrimination in hiring. Pursuant to this conclusion, I further find that Times, on July 17, violated Section 8(a)(3) and (1) of the Act when it refused to employ DNA pressmen Morris (Bud) Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson.

## 2. The alleged refusals to bargain

An employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing a term or condition of employment contained in a collective-bargaining agreement without the consent of the union.<sup>24</sup> The current collective-bargaining agreements between the Union and the Respondents, respectively, gave the divers chapel chairmen discretion to select substitute journeymen pressmen without management restraint except that, when calling in a substitute under the Journal, Times, and Press contracts, "preferences will be given to those persons whose names are listed on a Priority Substitute List supplied by the Union." News' collective-bargaining agreement with the Union did not refer to a priority substitute list in defining the chapel chairman's discretion to provide substitutes.

The Board has recognized that the referral of employees to an employer for hire is a mandatory subject of bargaining.<sup>25</sup> Here, the parties have stipulated that the traditional practice had been that the pressroom foreman would request the chapel chairman to furnish a substitute and that a substitute thereafter would appear, and the uncontroverted evidence reveals that the contractual priority substitute lists to be used in the preferential hiring of substitutes, where relevant, be furnished unilaterally by the Union.<sup>26</sup> Accordingly, I find, that before July 13, when the strike against DNA

began, the Union functionally had had broad independent discretion to furnish the respective Respondents' substitutes when so requested, from whatever sources it considered appropriate, limited only by a requirement that such substitutes be journeymen.

Although the Respondent correctly argues that the chapel chairmen at the various Respondent's newspapers did not follow a uniform method of hiring substitutes; that not all chapel chairmen had sought their substitutes in the first instance from the Detroit local representing DNA employees; and that, often, the substitutes retained were not from DNA, what is relevant here is that, until the strike against DNA began, the Union had been afforded recognized discretion to call in pressmen to work as substitutes for the Respondents from such sources as it had seen fit, including from DNA. In seeking to preclude the Union from obtaining substitutes from DNA, or from any other source, by decree, without first seeking to obtain the Union's consent, the Respondent acted to unilaterally change terms and conditions of hire and thereby failed to meet its bargaining obligation. That the Respondents' actions taken since the start of the strike against DNA to prevent the Union from using DNA pressmen as substitutes at its facilities also had been for the unlawful discriminatory reasons found above, serves to bring into clearer relief the bargaining violations of the Act found herein.

As indicated, the Respondents were not content to comply with their bargaining obligations under Section 8(d) of the Act by negotiating with the Union to obtain its consent to a limitation of the chapel chairmen's discretion. Instead, the respective Respondents unilaterally restricted the chapel chairmen's ability to select substitutes by, variously, giving the chapel chairman new lists of acceptable substitutes to be used thereafter in the selection of same, as at Journal and Times; by specifically prohibiting the future hire of substitutes from Detroit and limiting selection to pressmen who had worked as substitutes for the Respondent during the previous 3 months, as at Press; and by narrowing the selection of substitutes to those currently employed, as at News. I find that by unilaterally imposing these limitations upon the chapel chairmen without acquiring the Union's prior consent, the Respondents violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

1. The respective Respondents each are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material herein, the Union has been the collective-bargaining representative of the respective Respondents' employees in the following appropriate separate units:

All pressmen and pressmen apprentices employed by The Grand Rapids Press at its Grand Rapids, Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

All pressroom employees employed by the Bay City Times at its Bay City, Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

<sup>24</sup> *Atrium Plaza Health Care Center*, 317 NLRB 606 (1995).

<sup>25</sup> *McClatchy Newspapers*, 307 NLRB 773, 775 (1992).

<sup>26</sup> The Union's collective-bargaining agreements with Journal, Press, and Times contain no provision for employer involvement in the preparation, or for prior employer approval of the content, of the priority substitute lists referenced therein. As noted, News' contract with the Union did not even provide for use of a priority substitute list.

All press department employees employed by the Publisher of the Saginaw News at that Company's Saginaw Michigan, facility, excluding the foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

All press department employees employed by the Flint Journal at its Flint, Michigan, facility, excluding the foremen, assistant foremen, professional employees, office clerical employees, guards and supervisors, as defined in the Act.

4. By unilaterally changing the respective contractually established substitute employee referral systems between and the Union and themselves without obtaining the Union's consent, each of the Respondents has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act and Section 2(6) and (7) of the Act.

5. By each refusing to employ substitute employees because such employees were engaged in an economic strike on behalf, and in support, of the Union, and to discourage employees from engaging in this and other concerted activities, the respective Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act.

6. By refusing to hire Morris (Bud) Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson because they were engaged in an economic strike on behalf, and in support, of the Union, and to discourage employees from engaging in

this and other concerted activities, Respondent Times has violated Section 8(a)(3) and (1) of the Act.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they should be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The recommended Order also will require that Respondent Times make whole employees Morris (Bud) Chaney, Jim Centers, Pat Soper, Dan Lemae, and Willie Nelson for all earnings and benefits lost by reason of Times' refusal to employ them as substitutes on and after July 17, 1995. Such reimbursement shall be computed on a quarterly basis from the dates of Times' refusals to employ them until the dates of proper notice to the Union that Times is willing to hire them as substitutes, less any interim earnings as prescribed in *F. W. Woolworth Co.*,<sup>27</sup> with interest as computed in *New Horizons for the Retarded*.<sup>28</sup> Further, the recommended order will require that each of the Respondents rescind all the restrictions they unilaterally have imposed upon the Union's right under its current collective-bargaining agreements with these Respondents to call in substitutes and, where applicable, to establish, compile and maintain priority substitute lists.

[Recommended Order omitted from publication.]

<sup>27</sup> 90 NLRB 289 (1950).

<sup>28</sup> 283 NLRB 1173 (1987).